Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of)	
)	WT Docket No. 12-4
Application of Cellco Partnership)	
d/b/a Verizon Wireless and)	ULS File Nos.
SpectrumCo LLC for Consent to Assign)	0004996680
Licenses)	0004993617
)	
Application of Cellco Partnership d/b/a)	
Verizon Wireless and Cox TMI Wireless,)	
LLC for Consent to Assign Licenses)	

REPLY COMMENTS OF THE GREENLINING INSTITUTE

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The Greenlining Institute ("Greenlining") hereby files these Reply Comments in the above-captioned matter pursuant to the Commission's Public Notice of January 19, 2012, and Order of March 8, 2012.²

I. INTRODUCTION

Verizon, SpectrumCo and Cox ("the Applicants") have failed to address a number of issues raised by Greenlining and other parties. In particular, the Applicants have failed to address the impact of the agency agreements on the public interest, instead arguing that those agreements are irrelevant to the Commission's determination. However, despite the Applicants' attempts to portray the license transfer agreements, the agency agreements, and the joint venture agreement as separate contracts, those agreements are component parts of one contract. Similarly, while the Applicants argue that the proposed transaction will promote the Commission's goals for encouraging spectrum transfers in the secondary market, the accuracy of those arguments is questionable.

Greenlining, among others, has asked for more information regarding these, and other, issues.³ The Applicants have not responded to those requests, maintaining the position that the requested information is irrelevant.⁴ As a result, the Applicants have failed to provide sufficient information to meet their burden of proof.⁵

¹ FCC Public Notice, DA 12-67, Docket No. 12-4 (January 19, 2012) (Establishing Pleading Cycle) (hereafter, Public Notice).

² FCC Order, DA 12-67, Docket No. 12-4 (March 8, 2012).

³ Greenlining Opening Comments at 13; Petition to Deny of RCA-The Competitive Carriers Association at 30 (hereafter, RCA Petition); see Petition to Deny of The Rural Telecommunications Group, Inc. at 11 (hereafter, RTG

⁴ See Joint Opposition to Petitions to Deny and Comments of Cellco Partnership D/B/A Verizon Wireless,

SpectrumCo, LLC, and Cox TMI Wireless, LLC 70 (March 2, 2012) (*hereafter*, Opposition).

Memorandum Opinion and Order, In the Matter of Applications of AT&T Inc. and Cellco Partnership, WT Docket No. 09-104, 25 FCC Rcd 8704, 8716 (June 22, 2010) (hereafter, AT&T/Cellco Order).

II. THE COMMISSION SHOULD DETERMINE WHETHER THE CABLE COMPANIES ARE POTENTIAL COMPETITORS THAT IMPOSE LIMIT PRICING.

In its Opening Comments Greenlining, argued that the Cable Companies could be "actual potential competitors" whose threat of entry motivated current market participants to lower prices and improve service quality. The Applicants' Opposition does not directly address this issue, although it does repeat the Applicants' generalized claims that the Cable Companies determined that they could not profitably operate facilities-based wireless networks.⁷ As discussed in Greenlining's Opening Comments, the wireless market is highly concentrated, and there are no other potential market entrants.⁸ In determining whether Cox and SpectrumCo ("the Cable Companies") are actual potential competitors, the Commission must also consider (1) whether the Cable Companies would have entered the wireless market but for the transaction, (2) whether the Cable Companies entry into the wireless market is feasible, or (3) whether the Cable Companies' entry into the wireless market would have produced deconcentration or other pro-competitive effects. The Commission has requested information relating to these issues. 10 As of the date of this filing, Greenlining has not received unredacted copies of the Applicants' responses to the Commission's requests. Once that information is available, Greenlining will provide further input to the Commission on these issues.

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⁶ Greenlining Opening Comments at 8-13; *see also*, RTG Petition to Deny at 11-12; RCA Petition to Deny at 25-30;.

⁷ Opposition at 31.

⁸ Greenlining Opening Comments at 13.

⁹ See In re Applications of Pac. Telesis Group & SBC Communications, Inc., 12 F.C.C.R. 2624, 2634 (Jan. 31, 1997)

¹⁰ See FCC Requests for Information (March 8, 2012).

III. THE COMMISSION SHOULD INVESTIGATE WHETHER THE LICENSE TRANSFER AGREEMENT, THE AGENCY SALES AGREEMENTS, AND THE JOINT VENTURE AGREEMENT ARE ALL PART OF ONE CONTRACT.

In their Opposition, the Applicants continue to assert that the proposed transaction involves only the sale of spectrum and does not include the transfer of other assets, facilities, or customers. 11 The Applicants also continue to assert that the "license assignments and Commercial Agreements are separate from, and not contingent on, each other." ¹² As such, the Applicants maintain that the Commercial Agreements are not relevant to the proposed transaction, and that the Commission should not review them when considering the proposed transaction.¹³

The nature of the license assignments and recent statements by some of the Applicants appear to contradict these statements. Viewed in isolation, the spectrum transaction could be interpreted as counter to the parties' respective interests. Additionally, recent statements by the Applicants could be interpreted as statements that the Cable Companies were only willing to sell their spectrum holdings to a wireless provider in exchange for the ability to offer that provider's wireless service as part of a bundle. Based on these facts, there is some indication that the license assignment, agency sale, and joint venture agreements are separate parts of one contract. Accordingly, the Commission should consider this possibility when reviewing the proposed transaction.

¹¹ *See* Opposition at 49. ¹² *Id.* at 70.

A. It is Unclear Whether the License Assignment Agreements, Considered in Isolation, Were in the Best Interests of the Parties.

If the Applicants' assertions are true, the proposed transaction is puzzling, because both Verizon and the Cable Companies appear to be acting contrary to their respective interests.

Under the terms of the license assignment agreements, Verizon appears to be buying spectrum that it does not need. Similarly, the Cable Companies do not appear to be selling the spectrum in a manner which allows them to maximize their profits.

1. Verizon's Spectrum Purchase Will Likely Result in Verizon Owning Spectrum that It Does Not Need.

Verizon claims that it needs spectrum in specific markets to handle the increased bandwidth demands of its customers.¹⁴ However, Verizon does not argue that it needs spectrum in every market which is the subject of a license at issue in this proceeding. It seems unlikely that Verizon needs spectrum in all of those markets, especially given Verizon's claims that it uses its spectrum more efficiently than any other provider.¹⁵ As Randal S. Milch, Verizon's Executive Vice President & General Counsel noted, the proposed transaction is not a merger,¹⁶ which have the consequence of transferring all of the Cable Companies' spectrum to a combined company. It is unclear why, rather than purchasing spectrum in the markets where it needed it, Verizon chose to make a more inefficient purchase of all of the Cable Companies' spectrum holdings.

¹⁴ *Id*. at 12.

¹⁵ *Id*. at 24.

¹⁶ "The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers?" Hearing before the Subcomm. On Antitrust, Competition Policy, and Consumer Rights of the S. Comm. on the Judiciary, 112th Cong. (2012) (statement of Randal S. Milch, Executive Vice President & General Counsel, Verizon Communications Inc.).

2. The Cable Companies' Sale of their Entire Spectrum Holdings to One Purchaser May Not Be as Profitable as Selling Portions of those Holdings to Different Purchasers.

Similarly, it is unclear why the Cable Companies chose not to sell individual licenses or groups of licenses, which would theoretically be more lucrative. It is fair to assume that other providers need spectrum in those other markets. While a smaller provider might not be able to pay for the Cable Companies' entire spectrum holdings, they might be able to outbid Verizon for a single license or group of licenses, especially if those licenses were in areas where Verizon was not facing spectrum shortages. The Cable Companies' "blanket" sale of spectrum holdings may have resulted in the Cable Companies' receiving less profit than they would have from a sale of individual licenses. Similarly, given Verizon's claims of an upcoming "spectrum crunch," it is probable that the Cable Companies' spectrum holdings will continue to increase in value in the next few years. The Cable Companies may be able to make a higher profit by leasing the spectrum, and selling it at a much higher price in the future. If the spectrum transfer agreement is an independent contract, the Cable Companies' apparent failure to consider more profitable options for disposing of their spectrum is puzzling.

B. There is Some Indication That the Cable Companies Were Only Willing to Sell Their Entire Spectrum Holdings to a Buyer in Exchange For the Ability to Offer that Buyer's Wireless Services as Part of a Bundle.

On March 21, 2012, the Senate Judiciary Committee's Subcommittee on Antitrust held a hearing regarding the proposed transaction. During that hearing, David L. Cohen, Comcast's Executive Vice President, made a number of statements. Mr. Cohen indicated that Comcast did

¹⁷ See Opposition at 12.

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¹⁸ "The Verizon/Cable Deals: Harmless Collaboration or a Threat to Competition and Consumers?" Hearing before the Subcomm. On Antitrust, Competition Policy, and Consumer Rights of the S. Comm. on the Judiciary, 112th Cong. (2012) (hereafter, Verizon/Cable Hearing).

not view the license transfer agreement and the Commercial Agreements as separate. ¹⁹ Mr. Cohen indicated that Comcast negotiated with almost all the major carriers.²⁰ It is unclear whether those negotiations were for the sale of all of SpectrumCo's spectrum holdings, or for portions of those holdings.²¹ Comcast (and, apparently, the other Cable Companies), felt that an agreement with Verizon would be the most beneficial, and subsequently entered into that agreement.²²

There are conceivably many reasons that the Cable Companies decided to sell their entire spectrum holdings to Verizon. The parties' actions seem to not be fully in their best interests; However, Verizon is apparently willing to purchase spectrum that it does not need, and the Cable Companies are choosing not to sell off spectrum piece-by-piece. Based on the statements of the parties discussed above, one possible explanation for these actions is that the Cable Companies were specifically seeking to swap spectrum for the ability to sell Verizon's wireless services as part of a bundle. If this is true, the license transfer agreements and the agency agreements are not separate contracts. Rather, they are separate parts of one contract. The Commission should determine whether this is the case; if so, the Commission should consider the agency agreements as part of the proposed transaction.

¹⁹ Verizon/Cable Hearing (statement of David L. Cohen, Executive Vice President, Comcast Corporation), Randal S. Milch, Verizon Wireless' Executive Vice President & General Counsel disputed this statement, and asserted that the DOJ and FCC could not look beyond the "four corners" of the contract. Id. Mr. Milch was apparently invoking the parol evidence rule, which holds that parol evidence is not admissible to vary the terms of a fully integrated contract if that contract provides that all of the parties' agreements are merged in the written contract. See Fogelson v. Rackfay Construction Co., (1950) 300 N.Y. 334, 340. However, The parol evidence rule does not prohibit evidence that disguises the nature of a contract. See J.P. Morgan Chase Bank v. Liberty Mutual Ins. Co. (2002) 189 F.Supp.2d 24, 27. Accordingly, the parol evidence rule does not appear to preclude the Commission from determining whether the license assignment agreement, agency sales agreements, and joint venture agreement were all part of the same contract.

²⁰ Verizon/Cable Hearing (statement of David L. Cohen. Executive Vice President, Comcast Corporation).

²¹ As explained in the declaration of Paul Goodman, attached as Exhibit A, Greenlining sought clarification from Comcast regarding the negotiations, but has not yet received a response.

22 Verizon/Cable Hearing (statement of David L. Cohen. Executive Vice President, Comcast Corporation).

II. THE PROPOSED SPECTRUM TRANSFER MAY NOT PROMOTE THE COMMISSION'S SECONDARY MARKET GOALS.

As the Applicants acknowledge, ²³ the Commission's policies for the secondary market for spectrum are designed to "encourage more efficient use of spectrum, promote spectrum fungibility, and otherwise facilitate the movement of spectrum toward new and higher valued uses." ²⁴ The goals of those policies are to "promote the operation of competitive markets or the sale and lease of spectrum usage rights by licensees, and thereby facilitate both the transfer of the right to use spectrum for existing services to new, higher valued uses, and the availability of unused and underutilized spectrum to those who would use it for providing services."25

While the Applicants assert that the license transfer agreements will promote the Commission's secondary market goals, this is not necessarily the case. As discussed above, it is likely that the proposed spectrum transfer would result in Verizon's owning spectrum that it does not need.²⁶ That unused spectrum would most likely remain unused, and would therefore not promote the Commission's secondary market goals.

Additionally, as discussed in Greenlining's Opening Comments, the Cable Companies may be potential market entrants who exert competitive pressure on the wireless market.²⁷ If this is the case, the removal of the Cable Companies as potential market entrants would decrease that

²³ Cox PIS at 15-16; SpectrumCo PIS at 16-17.

²⁴ Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Market, 19 FCC Rcd 14165 (September 2, 2004).

²⁵ Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, Policy Statement, 15 FCC Rcd 24178 (rel. Dec. 1, 2000).Id. at 24178 ¶ 1, 24185-86 ¶ 18.

²⁶ See section III.A.1, supra.
²⁷ See section II., supra.

competitive pressure. Accordingly, the proposed transaction would not "promote the operation of competitive markets." ²⁸

The proposed transaction may result in presently unused spectrum being used by Verizon in areas where Verizon is facing spectrum shortages. However, the proposed transaction will also result in Verizon's owning spectrum in areas where it does not face spectrum shortages; accordingly, that spectrum may well remain unused. Additionally, the proposed transaction appears to carry a substantial risk of harming competition by eliminating a number of potential market entrants. Despite the Applicants' claims to the contrary, the proposed transaction does not appear to promote the Commission's secondary market goals.

III.CONCLUSION

The Applicants have not responded to arguments that the Cable Companies are potential market entrants who exert competitive pressure in the wireless market. Additionally, the Applicants have refused to address concerns regarding the agency agreements and joint venture agreement, despite ample evidence that those agreements, along with the spectrum transfer agreement, constitute one contract. Finally, despite the Applicants' claims to the contrary, the proposed transaction does not promote the Commission's secondary market goals.

The Applicants bear the burden of showing, by a preponderance of the evidence, that the proposed transaction is in the public interest.²⁹ The Applicants have failed to address many concerns regarding the transaction, particularly concerns regarding the agency agreements. As a result, the Applicants have provided insufficient evidence to demonstrate that the proposed

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²⁸ Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, Policy Statement, 15 FCC Rcd 24178 (rel. Dec. 1, 2000).Id. at 24178 ¶ 1, 24185-86 ¶ 18.

²⁹ Memorandum Opinion and Order, In the Matter of Applications of AT&T Inc. and Cellco Partnership, WT Docket No. 09-104, 25 FCC Rcd 8704, 8716 (June 22, 2010).

transaction is in the public interest. Accordingly, the Commission should either require the Applicants to address those issues in a comprehensive, forthright manner, or, alternatively, deny the Applications.

Respectfully submitte	ed,	Dated: March 26, 2012
/s/Samuel S. Kang General Counsel The Greenlining Institute		
/s/Stephanie Chen Senior Legal Counsel The Greenlining Institute		
/s/Enrique Gallardo Legal Counsel The Greenlining Institute		
/s/Paul S. Goodman Of Counsel The Greenlining Institute		

EXHIBIT A

DECLARATION OF PAUL GOODMAN

My name is Paul Goodman. I am Of Counsel of the Greenlining Institute
("Greenlining"). The Greenlining Institute is a national policy, organizing and leadership
institute working for racial and economic justice. The Greenlining Institute's mission is to
empower communities of color and other disadvantaged groups through multi-ethnic economic
and leadership development, civil rights, and anti-redlining activities. We also advocate before
regulatory agencies to advance these goals.

On March 21, 2012, I emailed Johnnie Giles, Comcast's Executive Director for External Affairs and John Gutierrez, Comcast's Director—Government Affairs, California Region, seeking further details regarding Comcast's negotiations of spectrum sales with other wireless providers. As of the filing of these Reply Comments, I have not received any response to that email.

I am familiar with the contents of the foregoing Reply Comments. The factual assertions made in the comments are true to the best of my knowledge and belief.

I declare that the foregoing is true and correct.

Executed on March 26, 2012.

/ _S /		
	Paul Goodman	